

1 DAVID A. HUBBERT  
Acting Assistant Attorney General

2 YEN JEANNETTE TRAN  
3 RIKA VALDMAN  
BORIS KUKSO  
4 Trial Attorneys, Tax Division  
U.S. Department of Justice  
5 P.O. Box 683  
Washington, D.C. 20044  
6 202-616-3366 (v) (Tran)  
202-514-6056 (v) (Valdman)  
7 202-353-1857 (v) (Kukso)  
202-307-0054 (f)  
8 [Y.Jeannette.Tran@usdoj.gov](mailto:Y.Jeannette.Tran@usdoj.gov)  
[Rika.Valdman@usdoj.gov](mailto:Rika.Valdman@usdoj.gov)  
9 [Boris.Kukso@usdoj.gov](mailto:Boris.Kukso@usdoj.gov)

10 *Attorneys for the United States of America*

11 IN THE UNITED STATES BANKRUPTCY COURT  
12 FOR THE EASTERN DISTRICT OF WASHINGTON

13 In re:

14 KING MOUNTAIN TOBACCO  
COMPANY, INC.,

15 Debtor.  
16

Case No. 20-01808-WLH11  
Chapter 11

**THE UNITED STATES’  
OPPOSITION TO DEBTOR’S  
FIRST AMENDED DISCLOSURE  
STATEMENT**

17  
18 The United States of America, on behalf of the Department of the Treasury,  
19 Alcohol and Tobacco Tax and Trade Bureau (the “TTB”), hereby files its  
20 opposition to Debtor’s First Amended Disclosure Statement (ECF No. 185-1).

Opposition to First Amended  
Disclosure Statement  
(Case No. 20-01808-WLH11)

1       The primary purpose of a § 1125 disclosure statement is to provide adequate  
2 information to the holders of claims or interests in soliciting their acceptance or  
3 rejection of a proposed plan. “Adequate information” is statutorily defined:  
4 “information of a kind, and in sufficient detail, as far as is reasonably practicable in  
5 light of the nature and history of the debtor and the condition of the debtor’s books  
6 and records, . . . , that would enable a hypothetical reasonable investor typical of  
7 holders of claims or interests of the relevant class to make an informed judgment  
8 about the plan.” 11 U.S.C. § 1125(a)(1).

9       The adequacy of disclosure statement information is evaluated using  
10 numerous factors, including, as relevant here whether it provides: a complete  
11 description of the available assets and their value; a liquidation analysis setting  
12 forth the estimated return that creditors would receive under Chapter 7;  
13 information regarding the future management of the debtor, including the amount  
14 of compensation to be paid to any insiders; an estimate of all administrative  
15 expenses, including attorney’s fees and accountant’s fees; the collectibility of any  
16 accounts receivable; information relevant to the risks being taken by the creditors  
17 and interest holders; the actual or projected value that can be obtained from  
18 avoidable transfers; the existence, likelihood and possible success of  
19 nonbankruptcy litigation; and the relationship of the debtor with affiliates. *See In*  
20 *re Reilly*, 71 B.R. 132, 134-35 (Bankr. D. Mont. 1987). *See generally* 7 COLLIER

Opposition to First Amended  
Disclosure Statement  
(Case No. 20-01808-WLH11)

1 ON BANKRUPTCY, ¶ 1125.02[2] (Richard Levin & Henry J. Sommer eds., 16th  
2 ed.). Even if previously approved by the court, the adequacy of disclosure may be  
3 revisited at plan confirmation. *See Official Comm. of Unsecured Creditors v.*  
4 *Michelson (In re Michelson)*, 141 B.R. 715 (Bankr. E.D. Cal. 1992).

5 Here, while the First Amended Disclosure Statement satisfies some of the  
6 United States' objections (ECF No. 169) to the original Disclosure Statement (ECF  
7 No. 155), it does not provide adequate information in the following areas and  
8 Debtor should be required to supplement the First Amended Disclosure Statement  
9 prior to approval.

10 1. The First Amended Disclosure Statement Does Not Provide Adequate  
11 Information About Debtor's Potential Recovery From Related Entities.

12 While the First Amended Disclosure Statement provides additional  
13 information about the business relationship between Debtor and its affiliate  
14 entities, Debtor still has not provided adequate information about Debtor's  
15 business relationship with its affiliate entities and the potential recovery of funds  
16 owed from the affiliate entities, which Debtor valued at over \$13 million (ECF No.  
17 185-1 at 11). Specifically, Debtor should address the following issues:

18 **Repayment of Debt.** First, the First Amended Disclosure Statement  
19 identifies three affiliates, Wheeler Fuel Distribution, Wheeler's Pawn Stars, and  
20 Wheeler Rock Products, that will fully repay Debtor on a repayment schedule of

Opposition to First Amended  
Disclosure Statement  
(Case No. 20-01808-WLH11)

1 equal payments made each calendar quarter over the course of the four to five  
2 years from the Effective Date (*Id.* at 18-19). However, no information is provided  
3 in the First Amended Disclosure Statement about the financial ability of these  
4 affiliates to repay their debts that collectively total about \$2.1 million (*Id.* at 11).  
5 Second, Debtor identified potential repayment by another affiliate, Wheeler Cattle,  
6 based on cattle sales (*Id.* at 19-20). However, no information is provided in the  
7 First Amended Disclosure Statement about the financial ability of Wheeler Cattle  
8 to repay its debt totaling about \$2 million (*Id.* at 11) (e.g, whether cattle is  
9 currently for sale, value of the cattle, forecasted cattle sale, other assets to satisfy  
10 debt). Third, Debtor has not identified any repayment by its affiliate, Wheeler  
11 Logging (*Id.* at 19). However, no information is provided in the First Amended  
12 Disclosure Statement about the financial ability of Wheeler Logging to repay its  
13 debt totaling about \$4.2 million (*Id.* at 11). Fourth, Debtor asserts that its affiliate,  
14 Mountain Tobacco Distributing, Inc., has no physical assets and ultimately is not  
15 collectible (*Id.* at 17-18). However, no adequate information is provided in the  
16 First Amended Disclosure Statement about the financial ability of Mountain  
17 Tobacco Distributing, Inc. to repay its debt totaling about \$4.7 million (*Id.* at 11).

18 **Ongoing Business Relationships.** The First Amended Disclosure Statement  
19 explicitly identifies four affiliates, Wheeler Fuel Distribution, Wheeler Kountry  
20 Korner, Wheeler Smoke N Gas, and Wheeler's Pawn Stars, that Debtor intends to  
Opposition to First Amended  
Disclosure Statement  
(Case No. 20-01808-WLH11)

1 do business with in the “foreseeable future” (*Id.* at 18-19). However, Debtor has  
2 not explicitly identified in the First Amended Disclosure Statement whether it will  
3 continue to do business with its other affiliates, Mountain Tobacco Distributing  
4 Inc., Wheeler Logging, Wheeler Rock Products, and Wheeler Cattle.

5 To provide adequate information regarding the foregoing, Debtor should  
6 provide accurate financial data about the affiliate entities’ assets and recovery  
7 potential in sufficient detail to allow a creditor to make an informed judgment  
8 about the proposed plan, including:

- 9 a. Identify all affiliate entities that Debtor intends to have on-going business  
10 with and provide a complete description of Debtor’s on-going business  
11 relationship with such affiliate entity on a going forward and post-  
12 confirmation basis;
- 13 b. Financial statements for affiliate entities that Debtor intends to have on-  
14 going business transactions;
- 15 c. Financial statements for affiliate entities where Debtor paid start-up  
16 costs;
- 17 d. For any affiliate entities that owe Debtor on a pre-confirmation  
18 receivable, all documents that memorialize any repayment terms and  
19 financial statements for these affiliates to determine whether they are  
20 capable of making payments; and

Opposition to First Amended  
Disclosure Statement  
(Case No. 20-01808-WLH11)

1 e. For any affiliate entities where Debtor made fund transfers (e.g.,  
2 Mountain Tobacco Distributing Inc. and Wheeler Logging), disclosure of  
3 the details of such transfers (e.g., dates of transfers and whether there was  
4 consideration for such transfers).

5 Furthermore, Debtor should explain the reasons that certain accounts may be  
6 uncollectible and not just base the assertion on a belief. *See, e.g., In re Multiut*  
7 *Corp.*, 449 B.R. 323, 345 (Bankr. N.D. Ill. 2011).

8 Additionally, Debtor identifies four affiliates, Wheeler Fuel Distribution,  
9 Wheeler Kountry Korner, Wheeler Smoke N Gas, and Wheeler's Pawn Stars, with  
10 which Debtor intends to continue business in the foreseeable future and with all  
11 arms-length transactions (*Id.* at 18-19). Debtor should disclose the factual basis of  
12 its assertion that all transactions with these affiliates are at arms' length.

13 2. The First Amended Disclosure Statement Does Not Provide Adequate  
14 Information About Compensation To Insiders.

15 In its First Amended Disclosure Statement, Debtor still has not disclosed the  
16 identity of any insider that will be employed or retained by the reorganized debtor,  
17 and the nature of any *compensation* for such insider, as required under 11 U.S.C.  
18 § 1129(a)(5)(B). The First Amended Disclosure Statement does indicate that  
19 Debtor's sole shareholder, Ms. Wheeler, and Secretary, Ms. Blodgett, do not "draw  
20 a salary from the Debtor" (*Id.* at 20), but does not disclose whether they are

Opposition to First Amended  
Disclosure Statement  
(Case No. 20-01808-WLH11)

1 compensated by Debtor in any other way nor the nature of any compensation in the  
2 future.

3 3. The First Amended Disclosure Statement Does Not Provide Adequate  
4 Information In The Liquidation Analysis.

5 The First Amended Disclosure Statement includes additional information on  
6 the liquidation value of its assets, but does not provide adequate information on the  
7 facts and assumptions that form the basis of Debtor's estimated liquidation value,  
8 that would allow the United States to determine if it would receive more under a  
9 Chapter 7 liquidation than under Debtor's proposed Plan. Specifically, the Debtor  
10 should address the following issues:

11 **Surety Bonds.** The First Amended Disclosure Statement states "[d]ebtor is  
12 without information as to whether any portion of the tobacco bonds may be  
13 refunded if cancelled during the coverage period" (*Id.* at 25). However, there is no  
14 information as to whether Debtor has inquired into the refundable value. Debtor  
15 should be required to inquire into this matter if it has not done so, and should  
16 disclose this information.

17 **Affiliate Receivables.** The First Amended Disclosure Statement contains  
18 scheduled and liquidated values of its affiliate receivables (*Id.*). Debtor states  
19 "[a]ffiliates have varying cash flows and limited cash on hand . . . A liquidation of  
20 the Debtor would result in only a fraction of the total anticipated repayment, due to

Opposition to First Amended  
Disclosure Statement  
(Case No. 20-01808-WLH11)

1 the Affiliates’ respective *current financial circumstances*” (*Id.*) (emphasis added).  
2 However, no adequate information is provided in the First Amended Disclosure  
3 Statement about the asserted scheduled and liquidated values. Debtor should  
4 provide the factual basis for its assertions, and financial data about the affiliate  
5 entities requested above.

6 **Inventory and Raw Materials.** The First Amended Disclosure Statement  
7 states “[d]ebtor’s sale prices of raw tobacco and other raw material take into  
8 consideration assumptions of a *very limited market* for raw tobacco...” (*Id.* at 26).  
9 Debtor also asserts its processed tobacco is processed into “proprietary blends that  
10 are the *exclusive intellectual property* of the Debtor [and that the] processed  
11 tobacco on hand has *no value on the open market*” (*Id.*) (emphasis added). Debtor  
12 should disclose the factual basis for these assertions.

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

Opposition to First Amended  
Disclosure Statement  
(Case No. 20-01808-WLH11)



1           WHEREFORE, the United States respectfully requests that the Court deny  
2 approval of the Debtor's First Amended Disclosure Statement, as it fails to comply  
3 with the requirements of 11 U.S.C. § 1125. Should the Court approve the First  
4 Amended Disclosure Statement, the United States requests a discovery schedule  
5 for plan confirmation to inquire into, *inter alia*, the issues raised herein.

6           DATED: February 16, 2021.

7                           DAVID A. HUBBERT  
8                           Acting Assistant Attorney General

9                           /s/ Yen Jeannette Tran

10                          YEN JEANNETTE TRAN

11                          RIKA VALDMAN

12                          BORIS KUKSO

13                          Trial Attorneys, Tax Division

14                          U.S. Department of Justice

15                          *Attorneys for the United States of America*

16  
17  
18  
19  
20  
Opposition to First Amended  
Disclosure Statement  
(Case No. 20-01808-WLH11)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20

/s/ Yen Jeannette Tran  
YEN JEANNETTE TRAN  
Trial Attorney  
United States Department of Justice,  
Tax Division

- 10 -